THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.10064 of 2007

Dated 11-07-2007

Between:

T. Rajendra

…Petitioner

And

Nizam's Institute of Medical Sciences and another

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.10064 of 2007

JUDGMENT:

The petitioner was awarded the contract to supply unskilled and semi-skilled Labour to the 1st respondent-Institute.

An agreement was entered into on 18-09-2003. The contract was to be in force for a period of three years. The contract provides for renewal, subject to certain conditions, and it also contains an Arbitrator clause.

The period of contract came to an end by 23-10-2006. The petitioner made a request to the 1st respondent to renew the contract. The bank guarantee is also said to have been extended for further period. Complaining that the 1st respondent did not accede to his request, the petitioner filed O.P.No.2427 of 2006 under Section 9 of the Arbitration and Conciliation Act 1996, in the Court of III Additional Chief Judge, City Civil Court, Hyderabad. The O.P was allowed, restraining the 1st respondent from discontinuing the contract of the petitioner. A further direction was given to the parties, to take necessary steps for appointment of an Arbitrator.

The 1st respondent addressed a letter dated 28-04-2007, requiring the petitioner to restrict the supply to 534 unskilled workers, and 89 semi-skilled workers. On the same day, it placed an order with the 2nd respondent to supply 95 unskilled and 22 semi-skilled labourers, from 01-05-2007, until further orders. The petitioner challenges the said proceedings.

It is contended that the action of the 1st respondent in issuing the impugned proceedings is not only violative of the order passed in O.P.No.2427 of 2006, but also illegal, arbitrary and unconstitutional.

The 1st respondent filed a counter-affidavit, opposing the plea of the petitioner. It is stated that the requirement of the hospital, as on 18-09-2003, when the contract was entered into with the petitioner, was 534 unskilled and 89 semi-skilled workers, and since

the same number is maintained, he cannot have any genuine grievance. It is stated that serious complaints have been received from various quarters, about the performance of the petitioner, and with a view to cope-up with the emergency services, orders were placed upon the 2nd respondent, to supply the required work force.

Heard Sri Vedula Venkata Ramana, learned counsel for the petitioner; Sri S.S. Bhatt, learned counsel for the 1st respondent, and Sri P. Venugopal, learned counsel for the 2nd respondent.

There is a dispute between the petitioner and the 1st respondent, as regards the renewal of the contract. As the things stand now, there is a direction by the Court of III Additional Chief Judge, City Civil Court, Hyderabad, requiring the parties to take necessary steps for appointment of an Arbitrator. That however, is a different aspect.

The 1st respondent felt that, its obligation under the contract with the petitioner is only to avail the work force to the extent of 534 unskilled workers and 89 semi-skilled workers. It was in this context, that even while the O.P.No.2427 of 2006 was pending, it issued a tender notification dated 29-11-2006 for supply of 95 unskilled workers and 22 semi-skilled workers. This notification was challenged by the petitioner by filing W.P.No.26111 of 2006. The writ petitioner was dismissed. Hence, there was no hindrance for the 1st respondent to proceed with the tender notification. However, before any further steps could be taken, the O.P. was disposed of, restraining the 1st respondent from discontinuing the contract of the petitioner.

In one of the impugned letters, the 1st respondent required the petitioner to restrict the supply of work force to 534 unskilled and 89

semi-skilled workers. Incidentally, this is the number indicated in Clause 14 of the agreement. As long as the number is maintained, it cannot be said that the 1st respondent had violated the order of injunction passed by the trial Court in O.P.No.2427 of 2006. This court is not inclined to accept the plea of the petitioner, that in addition to the number mentioned above, he alone is entitled to supply any additional work force. When there are serious complaints against him, and the relations are so strained, the 1st respondent cannot be denied the freedom, to engage the work force, on which it has confidence.

One important aspect is, about the selection of the agency to supply the additional work force. The 1st respondent itself recognized the necessity to issue tender notification, whenever it intended to identify an agency to supply the work force. The 2nd respondent was selected purely on nomination basis, and the selection was not proceeded by any tender notification. Such a practice cannot be approved. The 1st respondent must issue tender notification, inviting applications for the intending parties for supply of work force, which is needed.

For the foregoing reasons, the writ petition is allowed upholding the proceedings issued by the 1st respondent dated 28-04-2007, requiring the petitioner to restrict the work force to 534 unskilled, and 89 semi-skilled workers, but setting aside the proceedings dated 28-04-2007, placing the contract for supply of 95 unskilled and 22 semi-skilled labour, with the 2nd respondent. It shall be open to the 1st respondent to invite tenders for supply of the additional work force, that may be needed. To avoid inconvenience and dislocation of the work, it is directed that the arrangement with the 2nd respondent shall remain in force, for a period of four weeks from

today, and in the meanwhile, necessary arrangements shall be made, as directed above.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.11-07-2007.

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